

109TH CONGRESS
2D SESSION

S. 3734

To amend title 28, United States Code, to allow a judge to whom a case is transferred to retain jurisdiction over certain multidistrict litigation cases for trial, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 26, 2006

Mr. HATCH (for himself and Mr. SESSIONS) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to allow a judge to whom a case is transferred to retain jurisdiction over certain multidistrict litigation cases for trial, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Multidistrict Litigation
5 Restoration Act of 2005”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1 (1) under section 1407 of title 28, United
2 States Code (enacted April 29, 1968), the Judicial
3 Panel on Multidistrict Litigation (in this section re-
4 ferred to as the “Judicial Panel”), a group of 7 Fed-
5 eral judges selected by the Chief Justice of the
6 United States, assists in the centralization of civil
7 actions which share common questions of fact filed
8 in more than 1 Federal judicial district nationwide;

9 (2) civil actions described under paragraph
10 (1)—

11 (A) often arise from mass single-action
12 torts that cause death and destruction in which
13 the plaintiffs are from many different States;
14 and

15 (B) often involve issues of critical impor-
16 tance to the Nation, including information tech-
17 nology, intellectual property, antitrust, con-
18 tracts, and products liability cases;

19 (3) the Judicial Panel—

20 (A) identifies the 1 United States district
21 court (referred to in this section as the “trans-
22 feree court”) best equipped at adjudicating pre-
23 trial matters; and

24 (B) after pretrial, remands individual civil
25 actions back to the district where the civil ac-

1 tion was originally filed unless that action has
2 been previously terminated;

3 (4)(A) for approximately 3 decades, the trans-
4 feree court often invoked a general venue statute
5 that authorizes a district court to transfer a civil ac-
6 tion in the interest of justice and for the convenience
7 of the parties and witnesses;

8 (B) in effect, the transferee court simply trans-
9 ferred all of the civil actions for trial to itself; and

10 (C) this process worked well because the trans-
11 feree court was well-versed in the facts and law of
12 the centralized litigation and the court could assist
13 all parties to settle when appropriate;

14 (5) in 1998, the United States Supreme Court
15 held that the plain language of section 1407 of title
16 28, United States Code, requires the Judicial Panel
17 to remand all civil actions for trial back to the re-
18 spective districts from which such actions were origi-
19 nally referred;

20 (6) the absence of authority to transfer a cen-
21 tralized civil action for trial hampers the Judicial
22 Panel and transferee judges in their ability to
23 achieve the important goals of section 1407 of that
24 title promoting the just and efficient conduct of
25 multidistrict litigation;

1 (7) the Judicial Panel has inherent rulemaking
2 authority to promulgate procedural rules pertaining
3 to multidistrict litigation which the Judicial Panel
4 has already exercised to ensure that when a cen-
5 tralization occurs all civil actions of a similar nature
6 then filed and all later civil actions that may be filed
7 are sent to 1 district court;

8 (8) Congress has statutorily conferred the Judi-
9 cial Panel with rulemaking authority for the conduct
10 of its business not inconsistent with the United
11 States Constitution, Acts of Congress, and the Fed-
12 eral Rules of Civil Procedure; and

13 (9) in civil actions in which punitive damages
14 are to be imposed, individual courts, including trans-
15 feree courts, must ensure that the measure of pun-
16 ishment is both reasonable and proportionate to the
17 amount of harm to plaintiffs and to the amount of
18 compensatory damages received.

19 (b) PURPOSE.—The purpose of this Act is to improve
20 the litigation system in the Nation to allow a Federal
21 judge to whom a civil action is transferred under section
22 1407 of title 28, United States Code, to retain jurisdiction
23 over certain civil actions for trial to determine liability and
24 compensatory and punitive damages, if appropriate, in
25 compliance with due process requirements.

1 **SEC. 3. MULTIDISTRICT LITIGATION.**

2 Section 1407 of title 28, United States Code, is
3 amended—

4 (1) in the third sentence of subsection (a), by
5 inserting “or ordered transferred to the transferee
6 or other district under subsection (i)” after “termi-
7 nated”; and

8 (2) by adding at the end the following:

9 “(i)(1) Subject to paragraph (2) and except as pro-
10 vided in subsection (j), any action transferred under this
11 section by the panel may be transferred for trial purposes,
12 by the judge or judges of the transferee district to whom
13 the action was assigned, to the transferee or other district
14 in the interest of justice and for the convenience of the
15 parties and witnesses.

16 “(2) Any action transferred for trial purposes under
17 paragraph (1) shall be remanded by the panel for the de-
18 termination of compensatory damages to the district court
19 from which it was transferred, unless the court to which
20 the action has been transferred for trial purposes also
21 finds, for the convenience of the parties and witnesses and
22 in the interests of justice, that the action should be re-
23 tained for the determination of compensatory damages.”.

1 **SEC. 4. TECHNICAL AMENDMENT TO MULTIPARTY, MULTI-**
2 **FORM TRIAL JURISDICTION ACT OF 2002.**

3 Section 1407 of title 28, United States Code, as
4 amended by section 3 of this Act, is further amended by
5 adding at the end the following:

6 “(j)(1) In actions transferred under this section when
7 jurisdiction is or could have been based, in whole or in
8 part, on section 1369 of this title, the transferee district
9 court may, notwithstanding any other provision of this
10 section, retain actions so transferred for the determination
11 of liability and punitive damages. An action retained for
12 the determination of liability shall be remanded to the dis-
13 trict court from which the action was transferred, or to
14 the State court from which the action was removed, for
15 the determination of damages, other than punitive dam-
16 ages, unless the court finds, for the convenience of parties
17 and witnesses and in the interest of justice, that the action
18 should be retained for the determination of damages.

19 “(2) Any remand under paragraph (1) shall not be
20 effective until 60 days after the transferee court has
21 issued an order determining liability and has certified its
22 intention to remand some or all of the transferred actions
23 for the determination of damages. An appeal with respect
24 to the liability determination and the choice of law deter-
25 mination of the transferee court may be taken during that
26 60-day period to the court of appeals with appellate juris-

1 diction over the transferee court. In the event a party files
 2 such an appeal, the remand shall not be effective until the
 3 appeal has been finally disposed of. Once the remand has
 4 become effective, the liability determination and the choice
 5 of law determination shall not be subject to further review
 6 by appeal or otherwise.

7 “(3) An appeal with respect to determination of puni-
 8 tive damages by the transferee court may be taken, during
 9 the 60-day period beginning on the date the order making
 10 the determination is issued, to the court of appeals with
 11 jurisdiction over the transferee court.

12 “(4) Any decision under this subsection concerning
 13 remand for the determination of damages, other than pu-
 14 nitive damages, shall not be reviewable by appeal or other-
 15 wise.

16 “(5) Nothing in this subsection shall restrict the au-
 17 thority of the transferee court to transfer or dismiss an
 18 action on the ground of inconvenient forum.”.

19 **SEC. 5. EFFECTIVE DATE.**

20 (a) **MULTIDISTRICT LITIGATION.**—The amendments
 21 made by section 3 shall apply to any civil action pending
 22 on or brought on or after the date of the enactment of
 23 this Act.

24 (b) **TECHNICAL AMENDMENT.**—The amendment
 25 made by section 4 shall be effective as if enacted in section

1 11020(b) of the Multiparty, Multiforum Trial Jurisdiction
2 Act of 2002 (Public Law 107–273; 116 Stat. 1826 et
3 seq.).

